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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,007	03/06/2002	Anthony F. Aiello	112056-0037	7581
24267	7590	04/27/2005		
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			EXAMINER MCCARTHY, CHRISTOPHER S	
			ART UNIT 2113	PAPER NUMBER

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/092,007

Applicant(s)

AIELLO ET AL.

Examiner

Christopher S. McCarthy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/205</u> | 6) <input checked="" type="checkbox"/> Other: <u>response to arguments</u> .            |

### **DETAILED ACTION**

1. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng et al. U.S. Patent 6,802,021, as cited in prior office action, which was mailed on 11/15/04.
2. Claim 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Cheng et al. U.S. Patent 6,802,021 and is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Electromagnetic signals are deemed non-statutory as a form of natural phenomena. Suggested correction is a computer-readable medium containing computer-readable instructions, which are executable to perform the desired task.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng et al. U.S. Patent 6,802,021.

As per claim 1, Cheng teaches a method for performing an input/output operation to a storage device from a computer, the storage device having one or more data paths to the computer (column 4, lines 15-24), the method comprising the steps of: selecting a first data path from a set of data paths to the storage device (column 2, lines 35-51); attempting the input/output operation using the selected first data path; selecting, in response to an error in the input/output operation using the first data path, a next data path from the set of data paths; and attempting the input/output operation using the selected next data path (column 9, lines 11-15).

As per claim 2, Cheng teaches the method of claim 1 wherein the set of data paths is dynamically generated in response to storage device events (column 5, lines 25-45; column 6, lines 15-21).

As per claim 3, Cheng teaches the method of claim 2 wherein the storage device event further comprises a Fibre Channel loop initialization event (column 6, lines 62-65; column 7, lines 37-41).

As per claim 4, Cheng teaches the method of claim 1 wherein the first data path further comprises a last used data path associated with the storage device (column 6, lines 24-28; column 9, lines 37-62).

As per claim 5, Cheng teaches the method of claim 1 wherein the storage device further comprises a disk drive (column 5, lines 55-59).

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As per claim 6, Cheng teaches the method of claim 5 wherein the disk drive is operatively interconnected with the computer by a Fibre Channel Arbitrated Loop (column 6, lines 34-65).

As per claim 7, Cheng teaches the method of claim 1 wherein the computer further comprises a file server (column 4, lines 24-34; column 5, lines 8-11).

As per claim 8, Cheng teaches the method of claim 1 wherein the set of data paths are described by a related set of data structures (column 5, lines 25-45; column 6, lines 15-21).

As per claim 9, Cheng teaches the method of claim 1 wherein the data paths utilize a Fibre Channel connection (column 6, lines 34-65).

As per claim 10, Cheng teaches a method for maintaining a set of data paths accessible by a set of upper level services of a storage operating system of a computer (column 4, lines 15-24), the method comprising the steps of: creating a device instance associated with a storage device (column 5, lines 25-45; column 6, lines 15-21); creating a first path instance associated with a first path to the storage device (column 2, lines 35-51); creating, in response to events identifying an addition of a path, an additional path instance associated with an additional path to the storage device (column 5, lines 25-45; column 7, lines 23-26); and deleting, in response to events identifying a removal of a path, a path instance associated with the removed path (column 10, lines 15-20, wherein, disabling has the same functionality of deleting in this instance, in that, once a path instance is disabled, it is no longer used in the system).

As per claim 11, Cheng teaches the method of claim 10 wherein the step of creating a device instance occurs in response to receipt of an event identifying an addition of a storage device (column 7, lines 36-41).

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As per claim 12, Cheng teaches the method of claim 10 wherein the events identifying an addition of a path is a Fibre Channel loop initialization event (column 6, lines 62-65; column 7, lines 37-41).

As per claim 13, Cheng teaches the method of claim 10 wherein the events identifying removal of a path is a Fibre Channel loop initialization event (column 6, lines 62-65; column 7, lines 37-41; column 10, lines 15-20).

As per claim 14, Cheng teaches the method of claim 10 wherein the step of creating an additional path instance further comprises the step of linking the additional path instance to a linked list of path instances associated with the storage device (column 5, lines 25-45).

As per claim 15, Cheng teaches the method of claim 10 wherein the device instance and path instances are accessible via an application program interface (column 5, lines 8-11).

As per claim 16, Cheng teaches the method of claim 10 wherein the set of upper level services further comprises a redundant array of inexpensive disks layer of the storage operating system (column 5, lines 55-59).

As per claim 17, Cheng teaches a computer for use with a plurality of storage devices having one or more data paths associated with the storage devices (column 4, lines 24-34), the computer comprising: means for detecting changes to the data paths associated with the storage devices (column 9, lines 11-15); means for maintaining a set of path instances associated with each of the plurality of storage devices, the data path instances accessible to a set of upper level services (column 5, lines 5-45); means for performing input/output operations to the plurality of storage devices using a first data path; means for selecting alternate data paths, in response to an

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error occurring with the first data path; and means for performing input/output operations to the plurality of storage devices using the selected alternate data paths (column 9, lines 11-15).

As per claim 18, Cheng teaches the computer of claim 17 wherein the upper level services access the data path instances via an application program interface (column 5, lines 8-11).

As per claim 19, Cheng teaches a storage operating system executing on a computer (column 4, lines 15-24), the storage operating system comprising: a routing administration layer, the routing administration layer dynamically updating a set of device instances, each device instance associated with a storage device (column 5, lines 25-45; column 9, lines 27-62); wherein each device instance includes at least one path instance, each path instance identifying a path from the computer to the associated storage device (column 5, lines 43-45); and a set of upper level services, the upper level services capable of accessing the device instances (column 5, lines 5-24).

As per claim 20, Cheng teaches the storage operating system of claim 19 wherein the routing administration layer further comprises an application program interface, the application program interface providing the upper level services access to the set of device instances (column 5, lines 5-24; column 9, lines 27-35).

As per claim 21, Cheng teaches the storage operating system of claim 19 wherein the upper level services further comprises a redundant array of independent disks layer of the storage operating system (column 5, lines 55-59).

As per claim 22, Cheng teaches a computer-readable medium, including program instructions executing on a computer, for performing an input/output operation to a storage

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device having one or more data paths to the computer (column 4, lines 15-34), the program instructions including steps for: selecting a first data path from a linked list of data paths to the storage device (column 2, lines 35-51); attempting the input/output operation using the selected first data path; selecting, in response to an error in the input/output operation using the first data path, a next data path from the linked list of data paths; and attempting the input/output operation using the selected next data path (column 9, lines 11-15).

As per claim 23, Cheng teaches a computer-readable medium, including program instructions executing on a computer, for maintaining a set of data paths accessible by a set of upper level services of a storage operating system (column 4, lines 15-34), the program instructions including steps for: creating a device instance associated with a storage device (column 5, lines 25-45; column 6, lines 15-21); creating a first path instance associated with a first path to the storage device (column 2, lines 35-51); creating, in response to events identifying an addition of a path, an additional path instance associated with additional path to the storage device (column 5, lines 25-45; column 7, lines 23-26); and deleting, in response to events identifying a removal of a path, a path instance associated with the removed path (column 10, lines 15-20, wherein, disabling has the same functionality of deleting in this instance, in that, once a path instance is disabled, it is no longer used in the system).

As per claim 24, Cheng teaches Electromagnetic signals propagating on a computer network, comprising: said electromagnetic signals carrying instructions for execution on a processor for the practice of a method for performing an input/output operation to a storage device from a computer, the storage device having one or more data paths to the computer, the method having the steps, selecting a first data path from a set of data paths to the storage device;

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attempting the input/output operation using the selected first data path; selecting, in response to an error in the input/output operation using the first data path, a next data path from the set of data paths; and attempting the input/output operation using the selected next data path (column 4, lines 15-24; column 2, lines 35-51; column 9, lines 11-15).

### *Response to Arguments*

6. Applicant's arguments filed 2/15/05 have been fully considered but they are not persuasive.

Applicant has argued that Cheng does not teach the limitations of "selecting a first data path from a set of data paths to the storage device; attempting the input/output operation using the selected first data path; selecting, in response to an error in the input/output operation using the first data path, a next data path from the set of data paths; and attempting the input/output operation using the selected next data path." The examiner respectfully disagrees. Cheng teaches an I/O request sent from an application program (column 6, lines 3-7). This I/O request includes a specified/selected first data path (column 8, lines 26-27). An interceptor receives the I/O request and the data path selected and then either directs the data to the selected path, or, the interceptor re-directs the request to a non-failed path (column 9, lines 11-15). Therefore, the I/O operation as a whole included a selected first data path. Upon receiving the request, the interceptor checked the selected I/O path and saw that a failure would be probable, so it re-directed the request to a second data path. The selection of the first data path was performed by the actual I/O request application, and this request triggered the failure detection process as performed by the interceptor. The request attempted to use the selected path and failed. The

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interceptor, after it was determined that the first data path was a failing path, re-directed the request to a second path and then used that data path. This teaches all the limitations as argued and presented, in the claims, by the applicant. Therefore, all rejected claims stand.

### *Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. McCarthy whose telephone number is (571)272-3651. The examiner can normally be reached on M-F, 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

csm  
April 21, 2005

  
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